

**BATTLE CREEK CITY PLANNING COMMISSION
MEETING MINUTES
Wednesday, June 23, 2010**

1. Call to Order:

Chairman Preston Hicks, called the meeting to order at 4:00 p.m.

2. Attendance:

Members Present:

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| Steve Barker | Preston Hicks | Ed Scheinfeldt |
| Susan Baldwin (Mayor) | William Morris | Chip Spranger |
| Jan Frantz | John Godfrey | John Stetler |

Members Absent: None

Staff Present: Christine Hilton, AICP, Planning Supervisor
Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Administrative Assistant

3. Additions or Deletions to the Agenda: Revised Agenda handed out with items A & B under #8. New Business moved under #6. Public Hearings & Deliberation/Recommendations.

4. Approval of Minutes: Meeting Minutes of May 26, 2010.

Commissioner Scheinfeldt made note of a correction to page 8 of 9, 7 paragraph down should read: *"Commissioner Scheinfeldt stated he agrees with Commissioner Barker to begin preliminary steps now on the Master Plan and then after the receipt of the 2010 Census information make changes as needed"*.

A MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER GODFREY TO APPROVE THE PLANNING COMMISSION MEETING MINUTES FOR MAY 26, 2010 WITH CORRECTIONS NOTED ABOVE. VOTE ON MOTION: ALL IN FAVOR; NONE OPPOSED; MOTION CARRIED.

5. Correspondence: None

6. Public Hearing & Deliberations/Recommendations:

- A. Zoning Amendment (#A-02-10):** Petition request from Vandervoort, Christ & Fisher, P.C., representing Sun Hospitality, Inc. requesting an amendment to Chapter 1296 "Signs" of the Battle Creek Zoning Ordinance that regulates signage. The proposed amendment would allow for a panel replacement on legal nonconforming signs, add a criterion to the variance process, widen the scope of allowable signage for properties within 100 feet of the highway (I-94), and general language revisions.

Chairman Hicks declared the public hearing for #A-02-10 open.

Ms. Christine Hilton, Planning Supervisor, read the staff report stating that while this proposed ordinance revision is being submitted from an individual property owner, it needs to be reviewed

based on the merits of the proposed revisions and the overall effect they will have on properties throughout the City, and not with regard to the benefit it would provide to any individual property owner.

Ms. Hilton stated as outlined in the analysis, staff supports the proposed revision to 1296.28 (b) that allows for copy changes to nonconforming signs for similar uses, and 1296.31(k) that adds visibility and traffic safety from the interstate as a valid criteria for the review and approval of variances. Staff does not support amending 1296.37(a)(8) that addresses sign height and size as it relates to proximity to the interstate, as the distance of 100' is not a quantifiable distance supported by documentation that shows the revision will provide a benefit to the public as a whole. Therefore, staff recommends that the Planning Commission supports those following components of the proposed revision to the ordinance, based on the findings found in the analysis section of the staff report, and further that Planning Commission recommends approval of those amendments to the City Commission.

Mr. Nelson Karre, Attorney, Vandervort Christ & Fisher Law Office, 70 W. Michigan Ave., Ste 450, Battle Creek, MI 49017 was present on behalf of Sun Hospitality, Inc. Mr. Karre stated he was here today with Mr. Patel to try and resolve the problems they have in revising their sign. Noted Zoning Board request for change as submitted and that the previous sign permits for sign change had been approved in the past without any issues. Stated the Planning Department is now reviewing the permit applications and noted that it cannot be changed as it is a legal nonconforming sign and that the sign face cannot be changed. The Zoning Board of Appeals had denied their request as they determined it did not meet the criteria. Stated they appealed to circuit court and put a hold on it as he suggested it might be simpler if there were an amendment to the ordinance to allow the sign change instead of proceeding to circuit court. Stated there may be a problem with other hotels such as Best Western, Knights Inn and Days Inn needing to make changes in the near future and is concerned with what happens today and is asking for the face change to be permitted. Noted that an easy fix would be to approve item # 1.

Mr. Karre noted the proximity of their property to the highway and traffic safety for west bound traffic does not have a road-side front and is difficult to see because of their location and could cause traffic problems; and that east bound traffic cannot see until they are upon the property because of trees hiding their view. Stated that precedence had been set as other properties having higher signs and now are not allowed per city ordinance, but would in spirit be allowed because of highway proximity. Noted that for Mr. Patel to keep his sign in place he would need the Planning Commission to grant item #1, face change in the ordinance and not be restrictive of nonconforming signs. Mr. Karre is asking the Planning Commission to grant at least items #1, #2 and also possibly #3 of their request, so it then can move forward to City Commission for approval of the Sign Ordinance revision.

No one else spoke either for or against this petition and the public hearing was closed.

A MOTION WAS MADE BY COMMISSIONER FRANTZ, SUPPORTED BY COMMISSIONER MORRIS TO APPROVE THE ORDINANCE AMENDMENT TO CHAPTER 1296.28 (b) TO ALLOW COPY CHANGES TO NONCONFORMING SIGNS FOR SIMILAR USES; AND CHAPTER 1296.31 (k) THAT ADDS VISIBILITY AND TRAFFIC SAFETY FROM THE INTERESTATE AS A VALID CRITERIA FOR THE REVIEW AND APPROVAL OF VARIANCES; NOT TO INCLUDE AMENDING SECTION 1296.37 (a) (8).

Discussion:

Commissioner Stetler asked if they could have the opportunity to ask Mr. Karre some questions. Chairperson Hicks said yes, they may.

Commissioner Morris thanked Mr. Nelson Karre for being thorough and also Mr. Patel for coming today and he appreciates their confidence in the city and community with their investments.

Discussion:

Mayor Baldwin asked Commissioner Frantz why she is not in support of item #3 for tall signs. Commissioner Frantz stated per staff recommendations as she thinks with 100 ft. distance being questionable criteria from the interstate, she respects staffs advice in the staff report.

Mayor Baldwin asked which item allows the very tall signs. Ms. Hilton stated item #3. Mayor Baldwin stated she is in support of the tall signs as there are others that have them and think it would appear less cluttered in that particular area. Asked if there is a way to consider the height without the 100 ft.

Commissioner Frantz stated she would consider making a friendly amendment to the motion if she thought there were others who supported what the Mayor is suggesting. Commissioner Morris stated he would second that motion amendment.

Ms. Jill Steele suggested they should treat item #1 & #2 as stated in the first motion and then address the #3 option separately, as it might be an easier way to proceed.

Commissioner Godfrey stated to allow a change in a sign panel is reasonable, considering how properties change ownership frequently. Stated he was in support, and assume it would be the same for filling-stations if they were to change suppliers and does seem to be reasonable and would definitely be in support.

Commissioner Stetler asked the reasons for a sign not being allowed and what the ordinance would allow. Stated he agrees with changing of board signs and want to eliminate some of the legal nonconforming signs and would like to tie the language down tighter in the ordinance. Ms. Christine Hilton stated the staff report only contains sections that the petitioner requested be revised; noted the current ordinance section 1296.28 deals directly with maintenance of nonconforming signs and that section that is proposed to be amended now only would allow for the copies to change, which would be the panel, logo, or actual copy of words for the business. Noted that the rest of the section does address those issues such as altering the structure to prolong the life of the sign, or to change the shape, size or height and cannot be reestablished after damage, etc.

Mr. Karre stated a concern regarding what Commissioner Stetler asked about suggestion of putting holes in metal were literally enforced that might get in the way of replacing the sign face, and that they need to be careful they do not go to far with the literal application of those words.

Commissioner Morris asked what if a tornado came along and the sign needed to be replaced; said he feels they should be allowed to be replaced or if it became rusted and unsafe; they should be allowed to reinforce or replace the same size for the same user.

Commissioner Scheinfeldt stated he will be voting in favor the items #1 & #2; noted regarding section (b); subsection (28); said he hates double negatives and hope they will be voting for things that are lawful rather than for things that are not unlawful.

Commissioner Barker stated he will be supporting the motion, wanted to complement attorney Mr. Karre on providing the language to re-writing the ordinance; said he is not in support of #3 at this time.

Ms. Christine Hilton said part of the intent of enabling legislation as well as our local ordinances is to try to eliminate nonconforming using and structures, so keeping that in mind to have a blanket ordinance that would just allow any non-conforming sign to be reconstructed in any event would be the opposite of what the intent of statue and ordinance is. Noted our existing ordinance does state that if a sign has been destroyed and a new sign cost less than 50% of the replacement, then it can be reconstructed and anything over the 50% amount they would need to comply with the ordinance.

Commissioner Frantz commented regarding Commissioner Scheinfeldt statement regarding double negatives. Stated she believes that a sign that is allowed for by the law is different than a sign that is not unlawful; said she prefers the language to remain as it is stated.

Commissioner Godfrey asked that the motion on the table be restated. Commissioner Frantz re-read her motion from the staff report on page 5 of 5 for recommendations to allow items #1 & #2 for nonconforming signs to be replaced; and to omit item #3.

A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED MOTION APPROVED.

Commissioner Hicks asked if anyone wished to make a motion on item #3 of the petitioner's request.

Commissioner Morris stated he felt that the Mayor had a good point regarding the height where the sign is located and if the Mayor wished to make a motion, he would second.

Mayor Baldwin stated that she would like to have additional information and think about it more and would like to ask staff for more background information for review at a later date.

Commissioner Hicks asked if we would like to table or bring it up at a later date; Mayor Baldwin stated she would like to take her time to find-out more information and review later.

Commissioner Scheinfeldt stated the petition had three parts and think they are duty bound to render a decision on part 3; whatever it may be. Asked Jill Steele, Deputy City Attorney for opinion.

Ms. Jill Steele understood there was to be a motion on that 3rd part as written and there was a question on the interim and would be a motion part C of the petition, then proceed with it separated.

Mayor Baldwin said to clarify; they would move to table part #3 until addition information is provided.

A MOTION WAS MADE BY COMMISSIONER SPRANGER TO APPROVE ITEM #3; TO AMEND CHAPTER 1296.37(a)(8); SECONDED BY COMMISSIONER MORRIS.

A MOTION WAS MADE BY MAYOR BALDWIN, SUPPORTED BY COMMISSIONER STETLER TO POSTPONE MAKING A DECISION ON ITEM #3 OF THE ORDINANCE 1296.37 (A)(8) AMENDMENT REGARDING SIZE AND HEIGHT UNTIL THE AUGUST 25, 2010 MEETING SO ADDITIONAL INFORMATION MAY BE PROVIDED.

Commissioner Morris asked Ms. Steele if this motion reflects on the previous approval of items #1 & #2 and if the applicant can fix his sign as he requested. Ms. Steele stated no it does not; the City Commission will need to approve the amendment to the ordinance and then if approved the petitioners problem will be solved.

A ROLL CALL VOTE WAS TAKEN: SIX IN FAVOR (BALDWIN, FRANTZ, HICKS, MORRIS, SPRANGER AND STETLER); THREE OPPOSED (BARKER, GODFREY, AND SCHEINFELDT); MOTION APPROVED.

- B. Zoning Amendment (A-03-10): Petition from the Planning Department staff requesting an amendment to Chapter 1286 "Accessory Buildings and Uses in Residential Districts". The proposed ordinance amendment refines existing regulations in the current ordinance as well as limits the maximum size of an accessory building to 10% of the lot area not to exceed 1,500 s.f. and limits accessory buildings to the side and/or rear yard of a property.**

Chairman Hicks declared the public hearing for #A-03-10 open. Ms. Christine Hilton, Planning Supervisor, read the staff report regarding the ordinance amendment stating the proposed ordinance revisions were drafted based upon the consensus of the Planning Commission as derived from previous discussions, survey results, and the workshop, staff is requesting that the Planning Commission recommend approval of the proposed ordinance A-03-10 to the City Commission.

Ms. Mary Brandimore, 4174 Watkins Road stated she had purchased this property with 5 acres in November 2009, noted the property takes a lot of equipment to maintain. Said they have items stored in their garage and driveway had applied for a building permit for an accessory building and was to apply for a variance and was told the current ordinance was under revision. She asked to have a decision done today as it is the building season and asked that it please be passed.

No one else spoke either for or against this petition and the public hearing was closed.

A MOTION WAS MADE BY COMMISSIONER SCHEINFELDT, SUPPORTED BY COMMISSIONER SPRANGER TO APPROVE THE AMENDMENT TO CHAPTER 1286 TO INCLUDE STAFF REQUIREMENTS AS PRESENTED IN THE STAFF REPORT.

Discussion:

Commissioner Godfrey stated he appreciated what Ms. Brandimore said in regards to them waiting; said the need for them to make a decision is obvious as he noted that on Riverside Drive the owners were not waiting and is now a very large detached garage being built that is larger than their home. Stated this shows they need to take action now.

Commissioner Morris stated that if approved today it would be at least three weeks before it goes to the City Commission for approval.

Commissioner Scheinfeldt stated he appreciated the work, time and effort done by the staff that was put into this subject. Wanted to complement Commissioner Stetler for keeping this subject alive and need to make a decision.

Commissioner Stetler stated he is not in favor of this sized of building being allowed to be built; but the ordinance that is before them really cleans things up so much that he has it on his calendar five-years from now that he will bring it back to make smaller buildings. Stated he is in favor of it today.

Commissioner Frantz asked if at that time the possibility of materials for the structure reflect the similarity to the primary structure on the property.

A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR ; NONE OPPOSED MOTION APPROVED.

7. **Old Business:** None

8. **New Business:** None

9. **Comments by the Public:** Ms. Mary Brandimore thanked the commission.

10. Comments by the Staff and Commission Members:

Commissioner Morris stated that the Mayor pointed out that the City Commission will need to have two meetings on the accessory building ordinance revision and would be approximately five-weeks.

Commissioner Scheinfeldt stated he appreciated being given a copy of Chapter 1257 and asked when the Transitional Business District "Chapter 1257" had been approved; Ms. Hilton stated the original ordinance was in 1993 and a revision was done in December 2005.

Commissioner Scheinfeldt asked how many TBD were designated within the city and stated he would like to have one for the Bedford Road corridor and strongly suggest the city staff to look at the possibility. Ms. Hilton stated there was only one TBD on Beckley Road.

Commissioner Spranger stated he would like staff to look at the Beckley Rd. corridor before the W. Michigan Avenue; to allow more room for growth of businesses within the City of Battle Creek.

It was discussed the need to follow Roberts Rules; Ms. Jill Steele would bring meeting guidelines to the next meeting.

Commissioner Hicks asked regarding possible future Cell Tower discussion; he is increasingly concerned about the health implications especially with the placement of the towers and not sure if they have any options legally. Ms. Jill Steele stated the city does have an ordinance regarding cell towers that has criteria and there is some Federal legislation that they are bound by that is pretty particular.

Commissioner Godfrey asked why credible medical information or documentation would precluded from them discussion. He has read of other communities having discussion regarding implication of cell towers and the assumed medical liabilities.

Commissioner Scheinfeldt stated in agreeing with Commissioner Godfrey, that credible evidence should be allowed if it is credible information; noted that the body of evidence relating to cell towers and cell phones themselves is still out there and that he prefers not to deal with hear say, but only fact.

Commissioner Godfrey stated that when the cell tower was to be proposed on Riverside Drive at the Central Christian Church, during the Minges Riverside NPC meeting there were people there speaking on again about unreliable undocumented information. If it were credible medical information he would agree they should be allowed to discuss.

Commissioner Hicks stated he has documents regarding the subject of cell towers and has safety concerns and if with legal council they may discuss at a later time if appropriate.

11. Adjournment:

The meeting adjourned at 5:04 P.M.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Christine M. Hilton".

Christine M. Hilton, AICP
Executive Secretary
Planning Commission